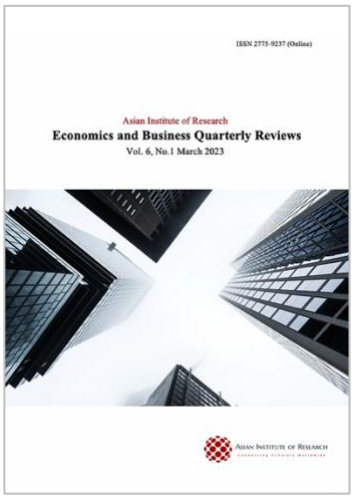

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The Debate on Reforms of the WTO Appellate Process: A Proxy for a More Serious Discussion of the Future of the WTO

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Abstract
Thirty years after its founding, the WTO is experiencing unprecedented turmoil and uncertainty, as the United States has raised questions relating to its national sovereignty and expressed serious doubts about the effectiveness of multilateralism. Perhaps more importantly, United States representatives have questioned the fairness of Appellate procedures that appear to run counter to the interests of the United States. A recent dispute between Hong Kong and the United States over the question of the "branding" of goods emanating from the customs territory of Hong Kong has served as a "crisis point" or proxy to the larger dispute between the United States and China relating to needed reforms in the organization. How this dispute is resolved may go a long way in determining both the future of multilateralism and the participation of the United States in the World Trade Organization itself.

Keywords: GATT, WTO, ITO, Dispute Settlement, Consensus, Panels, Appellate Body

1. Introduction and Context

The conclusion of World War II saw the creation of three international institutions – the United Nations, the International Monetary Fund, and the World Bank—largely through the leadership of the United States —and the failure to create a fourth institution, the International Trade Organization—largely through the opposition, or perhaps more accurately, the failure of leadership on the part of the United States of America. The inability to create an institution dedicated to resolving issues relating to international trade would leave the General Agreements on Tariffs and Trade (GATT) as the forum for the discussion of trade liberalization and the reduction of worldwide tariffs—and the later discussion of issues such as providing protections of intellectual property, limiting state subsidies, and curtailing dumping—issues related to what has been termed as the "Third Industrial Revolution" (Rifkin, 2011). Eventually, when GATT was transformed into the World Trade Organization in 1995

as a result of the Marrakesh Agreement (Driessen, 1995) there would finally be an institution closely resembling the one envisioned fifty years earlier.

Now, almost thirty years later, the WTO is experiencing turmoil and uncertainty, as the United States has raised questions relating to its national sovereignty and expressed serious doubts about the effectiveness of multilateralism. Perhaps more importantly, United States representatives have questioned the fairness of procedures that appear to run counter to the interests of the United States. Recently, a dispute between Hong Kong and the United States over the question of the" branding" of goods emanating from the customs territory of Hong Kong has served as a "crisis point" or proxy to the larger dispute between the United States and China. How this dispute is resolved may go a long way in determining both the future of multilateralism and the participation of the United States in the World Trade Organization itself.

2. A Chronology of a Dispute

In 2011, Ron Kirk, who served as the United States Trade Representative (USTR) from 2009 to 2013, stated:

> The United States is an original member of the WTO and a steadfast supporter of the rules-based multilateral trading system that it governs. Working through the WTO, the United States is able to protect and advance the economic interests of American businesses and workers while opening foreign markets. These actions protect and create jobs and support economic growth here at home. The United States is also a world leader in securing the reduction of trade barriers to expand global economic opportunity, to raise standards of living, and to reduce poverty. The WTO agreements also provide a foundation for U.S. bilateral and regional agreements… (Office of United States Trade Representative, 2011).

Since this date, however, the enthusiasm of the United States has waned. In August of 2020, a notice appeared on the US Federal Register (2020) requiring that Hong Kong-made goods be re-labeled as "Made in China" in order to be permitted entry to US ports – a determination that made it clear that the United States did not consider Hong Kong a separate customs entity from Mainland China. The Federal Register (2020) states in "Country of Origin Marking of Products in Hong Kong":

> On July 14, 2020, the President issued Executive Order 13936 on Hong Kong Normalization. Pursuant to section 202 of the United States-Hong Kong Policy Act of 1992 (22 U.S.C. 5722), the President suspended the application of section 201(a) of the United States-Hong Kong Policy Act of 1992, as amended (22 U.S.C. 5721(a)), to certain statutes, including 19 U.S.C. 1304, due to the determination that Hong Kong is no longer sufficiently autonomous to justify differential treatment in relation to China. The President ordered that, within 15 days of the Executive Order, appropriate actions must be commenced by relevant agencies, consistent with applicable law [emphasis added].

As a member of the World Trade Organization, Hong Kong is designated by the official title "*Hong Kong, China*," insisting that its customs jurisdiction is operated independently of Beijing. The government of Hong Kong lodged a complaint to the WTO in late 2020, laying out seven specific rules of the global trading system that it said the United States had broken. Hong Kong asserted that US policy "undermined the Hong Kong brand" and placed an "unnecessary burden" on Hong Kong businesses exporting goods to the United States.

On October 30, 2020, Hong Kong requested formal "consultations" with the United States regarding "certain measures concerning the *origin marking requirement* applicable to goods produced in Hong Kong, China" (see World Trade Organization 2022a, DS597).
Hong Kong claimed that measures were inconsistent with

- Articles I:1, IX:1 and X:3(a) of the GATT 1994;
- Articles 2(c), 2(d) and 2(e) of the Agreement on Rules of Origin; and
- Article 2.1 of the TBT (Technical Barriers to Trade) Agreement.

On November 9, 2020, "the United States requested the Chair of the Dispute Settlement Body (DSB) of the World Trade Association to circulate to Members a communication where it indicated that the United States was willing to enter into consultations with Hong Kong, China, without prejudice to the US view that the measures imposed

by the United States concern issues of national security [were] not susceptible to review or capable of resolution by WTO dispute settlement."

On November 13, 2020, the Russian Federation requested to join the consultations. Other nations similarly attempted to be a part of the process outlined in WTO protocols. On November 19, 2020, the United States requested the Chair of the DSB to circulate to Members a communication where it rejected the Russian Federation's request to join the consultations. The United States showed no interest in affording Russia with an opportunity to weigh in on the issues presented.

2.1. A Chronology of Panel and Appellate Body Proceedings in Relation to the U.S.-Hong Kong Dispute (World Trade Organization, 2022a)

The most recent dispute with Hong Kong arose after former President Trump signed a 2020 executive order which ended Hong Kong's "special trading status" with the United States, although Hong Kong remains a member of the WTO and claims protections under "normal trade" provisions of the WTO Charter.

On January 14, 2021, Hong Kong requested the establishment of a panel to resolve the dispute. Under the provisions of the WTO dispute settlement procedures, an independent body is established by the Dispute Settlement Body (DSB), consisting of three experts, to "examine and issue recommendations on a particular dispute in light of WTO provisions." At a meeting on January 25, 2021, the DSB temporarily deferred the establishment of a panel to a future date—perhaps in the hope that the matter could be resolved by the parties in the interim.

At its meeting on February 22, 2021, Brazil, Canada, China, the European Union, India, Japan, Korea, Norway, the Russian Federation, Singapore, Switzerland, Turkey, and Ukraine formally reserved their third-party rights, as "interested parties" to the Hong Kong-United States dispute.

On April 19, 2021, Hong Kong formally requested the Director-General to compose the panel. Ten days later, on April 29, 2021, the Director-General composed the panel.

On October 26, 2021, the Chair of the panel informed the DSB that the panel expected to issue its final report to the parties in the second quarter of 2022. However, on June 21, 2022, the Chair of the panel informed the DSB that due to the *complexity of the dispute*, the panel was now expected to issue its final report in the last quarter (October-December) of 2022.

On December 21, 2022, the panel report was circulated to Members.

Bermingham (2022) reported that the United States strongly rejected the ruling which was favorable to Hong Kong, criticizing its "flawed interpretation and conclusions," quoting Adam Hodge, a spokesperson for the Office of the United States Trade Representative. According to Bermingham (2022), Hodge stated that the United States does not intend to remove the marking requirement as a result of this report and that the U.S. will not cede its judgment or decision-making over essential security matters to the WTO. Hodge further stated that Mainland China's actions had eroded the autonomy and democratic and human rights in Hong Kong and were a threat to the national security interests of the United States (Hodge 2022).

These statements reflect the position of the United States that issues of national security cannot be reviewed in WTO dispute settlement, and that the WTO has no authority to second-guess the ability of a WTO member to respond to what it considers a threat to its security (Hodge 2022).

On the other hand, Hong Kong welcomed the ruling, which affirmed it as a separate customs territory from the Mainland. Stated Algernon Yau, the Secretary for Commerce and Development in Hong Kong, "The ruling has once again confirmed that the US has disregarded international trade rules, attempted to impose discriminatory

and unfair requirements unilaterally, unreasonably suppressed Hong Kong products and enterprises, and politicized economic and trade issues."

The United States has reserved its right to appeal the case. However, ironically, since the United States has blocked any new appointments to the WTO's Appellate Body, there are currently no judges to hear appeals.

In a related development, concerning the continued trade war between China and the United States, earlier in December of 2022, the United States also announced that it would not abide by a WTO decision that tariffs that had been put in place during the Trump administration on steel and aluminum violated WTO obligations. As to this matter, United States Trade Representative Katherine Tai warned the WTO that it was skating on "very, very thin ice," because the decision "gets deep into creating requirements and parameters for what is or is not a legitimate national-security decision (Bermingham 2022).

A path moving forward is an open question at this time.

3. A Prelude to the WTO: The GATT

The General Agreement on Tariffs and Trade (GATT), also known as GATT 1947, was created in 1947 by twenty-three countries (see McKenzie, 2020). Hopewell (2021) commented:

> For over 70 years, US support for multilateral institutions has been a cornerstone of the liberal international economic order (LIEO). Nowhere is this more apparent than in the trade regime. As the dominant state in the international system, the United States played a central role in leading the construction of an open and rules-based multilateral trading system. The American hegemon 'ran the system,' providing leadership and facilitating cooperation among states. The rules of the multilateral trading system played a key role in fostering increasing economic integration and creating stable conditions for the functioning of global markets.

The original twenty-three GATT members were Australia, Belgium, Brazil, Burma (now Myanmar), Canada, Ceylon (now Sri Lanka), Chile, China, Cuba, Czechoslovakia (now the Czech Republic and Slovakia), France, India, Lebanon, Luxembourg, Netherlands, New Zealand, Norway, Pakistan, Southern Rhodesia (now Zimbabwe), Syria, South Africa, the United Kingdom, and the United States. When a proposed International Trade Organization (ITO), described below, never came into existence largely because of opposition in the United States Senate, the GATT "metamorphosed then into an international organization that administered the GATT agreement and [that] provided the forum where nations could promote trade liberalization" (Carter, Trimble, & Bradley, 2003, p. 498; see also Schott, 1990).

The GATT was designed to minimize barriers to international trade by eliminating or reducing quotas, tariffs, and state subsidies. The GATT was intended to resurrect economies that had been devastated after World War II, hopefully putting an end to a period of protectionism and economic hardship that led to World War II—paving the way for more than 70 years of economic growth, trade expansion, and increased globalization. Specifically, GATT member states assumed four fundamental obligations:

1. Apply trade barriers on a non-discriminatory basis;
2. Limit specific tariffs at the levels set forth in the GATT tariff schedules;
3. Refrain from undertaking activities circumventing trade concessions through the use of alternate barriers to trade; and
4. Settle trade conflicts through consultations and a special dispute process (see Hoekman & Mavroidis, 1994).

Discussions and negotiations undertaken under the auspices of the GATT were termed as "Rounds." The GATT held eight rounds from April 1947 to December 1993. The key objective of the GATT was "trade without discrimination." Every member of the GATT was to enjoy equality in trade with any other member. This principle is known as the "most-favored nation principle" [MFN] or in the alternative as "national treatment obligation," which has continued into the framework of the WTO as "normal trade relations" (see McRae, 2012). Article 1, paragraph 1 of the GATT states that "*Any advantage, favour, privilege or immunity granted by any contracting*

party to any product originating in or destined for any country shall be accorded immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties" (emphasis added). The practical application of the MFN principle was that once a country had negotiated a tariff reduction with another GATT Member (as a practical matter, that party is usually its most important trading partners), this same cut would automatically apply to all GATT signatories.

4. What Might Have Been? A Brief History of the Failed International Trade Organization (ITO) and its Relationship to the General Agreement on Tariffs and Trade (GATT)

The GATT was not expected to undertake the role of an independent international trade organization. The GATT was designed to function on a temporary or interim basis until such time as a permanent organization could be established. The International Trade Organization (ITO) was the name proposed for an international institution designed for the regulation of international trade and related matters.

The United States, in collaboration with several of its allies, led the effort to form the ITO in the period 1945 to 1948. The effort eventually failed due to the inaction of the United States Congress to support the measure. Because the ITO never came into existence, international trade continued to be managed through the GATT, and only after 1995, by the Word Trade Organization.

The Bretton Woods Conference, formally known as the *United Nations Monetary and Financial Conference*, was attended by 730 delegates from each of the forty-four allied nations in Bretton Woods, New Hampshire from July 1-22, 1944. The deliberations at the Conference would eventually lead to the creation of the International Monetary Fund (IMF), which came into formal existence in 1945 with twenty-nine member countries with the goal of reconstructing the international monetary system, and the World Bank (WB), initially designed to provide low interest loans to developing countries for the purpose of supporting country-specific development projects. At the same time, delegates to the Bretton Woods Conference also recognized the need for a comparable international institution for international trade to complement the work of these institutions (see Batt, 1949).

However, the Bretton Woods Conference was attended by expert representatives of finance ministries and not by representatives of trade ministries. The lack of technical expertise on the part of the delegates was cited as the reason a separate trade agreement was not negotiated at that time (Palmeter & Mavroidis, 2004).

Recognizing this fact, in December of 1945, the United States invited its war-time allies to enter into discussions in order to conclude a multilateral agreement for the reciprocal reduction of tariffs on goods. In July 1945, the US Congress had granted President Truman the authority to negotiate and conclude such an agreement. At the urging of the United States, the United Nations Economic and Social Committee (ECOSOC), one of the principal organs of the newly-created United Nations (Green, 1952), adopted a resolution in February of 1946, calling for a conference to draft a charter for an International Trade Organization (ITO).

A working or Preparatory Committee was established later in February 1946, which met for the first time in London in October 1946 to begin work on establishing a charter for the creation of an international trade organization. The work continued from April to November of 1947.

At the same time, eight countries (the United States, the United Kingdom, Canada, Australia, France, Belgium, the Netherlands, and Luxembourg) signed the "Protocol of Provisional Application of the General Agreement on Tariffs and Trade."

The founding document of the ITO was negotiated in Havana, Cuba from November 1947 to March 1948. The Havana Charter (known as the Final Act of the United Nations Conference on Trade and Employment) provided for the establishment of the ITO and set out the basic rules for international trade and other international economic matters. The Charter was signed by fifty-six countries, including the United States, on March 24, 1948. It provided for international cooperation in facilitating international trade and in establishing rules against anti-competitive business practices (United Nations Treaty Collection, 1948).

The Havana Charter was proposed by John Maynard Keynes, the "brainchild" of the creation of the International Monetary Fund (Batt, 2019). Its goal was to establish the ITO and a complementary financial institution to be called the International Clearing Union (ICU), and an international currency to be known as the bancor (see Schumacher, 1943). The Charter, however, never came into force, in part because in 1950, the Truman Administration announced that it would not submit the treaty to the United States Senate for its ratification, largely because Republicans, increasingly skeptical of U.S. involvement in international organizations, made it "harder for the Truman Administration to win approval for measures of trade liberalization" (Toye, 2003). The major argument raised against the new organization was that it interfered with U.S. sovereignty. Of special concern was the creation of the new international currency.

Reflecting on the enormous success and popularity of the European (Marshall) Recovery plan, supporters countered that "Without restoring world trade it is certain that rebuilding the European production will prove a futile palliative. It does no good to rebuild the factories, clear up ports, if the goods have nowhere to go…. The ITO is the only international instrument for achieving that goal within the framework of the United Nations" (Batt, 1949, p. 329). Batt, who had served as a member of the War Production Board during World War II, added: "Repudiation of the Charter would endanger the political leadership of this country. The Charter has become identified as an American project, and its success or failure will be considered as a success or failure for American leadership" (p. 229).

A little more than one year later, however, on December 6, 1950, President Truman announced that he would no longer seek Congressional approval of the ITO Charter. Because the United States had not signed on to the Charter, no other state ratified the treaty. Elements of the Charter would later become part of the GATT, but no longer under the auspices of a separate organization modeled on the United Nations, the International Monetary Fund, or the World Bank.

4.1. The GATT as the Instrument for Negotiations Relating to International Trade

With the failure to create an international organization specifically dedicated to considering and hopefully resolving issues relating to international trade, countries turned to the GATT to handle problems concerning trade relations. As a result, the GATT would over the years "transform itself" into a *de facto international organization* until such time as an institution such as the ITO could be established. That process would take another forty-five years.

As noted above, the GATT held eight rounds of meetings—the first beginning in April 1947, the last ending in December 1993 (see Irwin, 2009). Each of the Rounds resulted in significant achievements, which are summarized as follows.

- The first meeting (1947) took place in Geneva, Switzerland, and included twenty-three countries. The focus of this opening conference was on tariffs. The members established tariff concessions (reductions) amounting to more than US$10 billion globally.
- The second series of meetings began in April 1949 and were held in Annecy, France. Again, tariffs were the primary topic. Thirteen countries attended the second meeting, and they accomplished an additional 5,000 tariff concessions reducing tariffs.
- Starting in September 1950, the third series of GATT meetings occurred in Torquay, England. Thirty-eight countries participated, and almost 9,000 tariff concessions were agreed to, reducing tariff levels by as much as 25%.
- The fourth series of meeting took place in Geneva, Switzerland in 1956, attended by twenty-five countries, and resulted in a further reduction in worldwide tariffs—this time by US$2.5 billion. Japan was involved in the GATT for the first time in 1956.
- In 1964, GATT began to work toward curbing "predatory" pricing policies, known as dumping. An arrangement regarding international trade in textiles, of special concern to developing nations, known as the Multifibre Arrangement (MFA), came into force.

In the decade of the 1970s, certain non-tariff barriers (NTBs), as opposed to direct tariffs, began to achieve more prominence and recognition as serious impediments to free trade.

The Tokyo Round which took place between 1973 to 1979, resulted in a series of separate voluntary agreements or "Codes" on issues such as subsidies, technical barriers to trade, and government procurement (McRae & Thomas, 2017). These codes included agreements on Standards (thirty-eight individual states) (Middleton, 1980); the Subsidies Code (with twenty-four states, including the European Union as a single unit) (Stoler, 2010); and an Anti-Dumping Code (signed by twenty-five states) (see Yarrow, 1987; Lowenfeld, 1994). While these issues were vigorously debated, the Tokyo Round was essentially unable to satisfactorily resolve issues to the mutual satisfaction of both developed and developing nations—setting up the controversy that would continue to plague the WTO until today with the collapse of the Doha Round negotiations in 2015 (Editorial Board of the New York Times, 2016).

Exceptions to GATT rules were also recognized and could be granted through a waiver which gave parties the ability to implement "safeguard measures" that allow a nation to impose import restrictions or to increase a tariff in order to "prevent or limit serious injury to domestic producers" (Rai, 2011), or by claiming a balance-of-payments crisis (Petersmann, 1986). The formation of a customs union or other free trade areas also triggered exemptions from GATT rules. In addition, "developing nations" were exempted from many GATT obligations (Whalley, 1990) and were granted "special concessions" beyond normal MFN rules. These exemptions or exceptions have been similarly recognized under the WTO (see Leebron, 1996; Dreyfuss & Lowenfeld, 1996/1997) and are the subject of continued debate and controversy.

By almost all standards, the GATT was immensely successful. The average tariff rate fell from around 22% when the GATT was first signed in Geneva in 1947 to around 4 to 5% by the end of the Uruguay Round in 1993. However, the GATT still lacked a coherent institutional structure. In short, the GATT was a legal agreement or contract acting as an international organization. After its creation in 1995, the WTO would be afforded the full "privileges or immunities" accorded to the specialized agencies of the United Nations. While the WTO largely incorporated the principles of the GATT, it has proven to be better able to resolve issues relating to intellectual property through enacting the TRIPS Agreement (Taubman, Wagner, & Watal (eds.), 2012; Correa, 2020) and has incorporated a faster dispute settlement system, which is the main subject matter of this study.

4.2. Dispute Settlement in the GATT System

A review of the dispute settlement under the GATT is helpful for comparison purposes. Jackson, Davey, and Sykes (2002) outlined the dispute settlement procedures in the GATT system. Article XXIII was the GATT's principal dispute settlement provision, but contained "very little procedural detail," relying instead on improvising and developing "procedures through practice over the years." Initial procedures adopted under the GATT provided that parties would consider disputes at the Ministerial level at regular meetings or through the use of "working parties." In the 1950s, procedures were altered, and the practice became to use *panels* to consider disputes. A panel was composed of individuals (usually three in number) who would act in their individual capacities and not as representatives of their national interests in an effort to emphasize adjudication by independent decision-makers. As a practical matter, "the GATT system experienced some problems with delays and failures to adopt reports [at the GATT Council level] because of blocking tactics by losing parties that prevented a consensus in the GATT Council" (Jackson, Davey, & Sykes, 2002). The system of dispute resolution adopted under the WTO would attempt to address these perceived deficiencies found under the GATT.

5. Towards the WTO

GATT was expanded and refined over the years. By 1995, 125 nations were signatories to its agreements, which covered about 90% of global trade.

The last, and perhaps most important negotiations carried out under the GATT was the Uruguay Round, which lasted from 1986 to 1993, with agreements signed in 1994 creating the WTO (Srinivasan, 1998). The IMF Survey

(1994, pp. 2-3) presciently predicted noted that "The Final Act would, after ratification…, cut tariffs on industrial goods by an average of more than one-third, progressively liberalize trade in agricultural products, and convert the GATT from a provisional agreement into a formal international organization, to be called the World Trade Organization (WTO)."

In fact, the Uruguay Round achieved *many* notable successes. Tariffs on industrial goods were reduced on average by more than one-third; barriers to trade in agricultural products were significantly eased due to increasing pressures exerted by developing nations; rules were strengthened in the area of investments; and previously "uncovered areas," such as trade in services, textiles, clothing, and intellectual property, were brought under the auspices of the WTO. The WTO would also include a major dispute resolution mechanism (Jackson, 1998), representing a "substantial strengthening of what existed under the General Agreements on Tariffs and Trade (GATT)" (Carter, Trimble, & Bradley, 2003, p. 399)—or at least that was the expectation.

Carter, Trimble, and Bradley (2003) note that among the most important provisions of the Final Act's 550 pages include:
15 separate agreements, annexes decisions and understandings" that were designed to bring trade in agricultural products, services, textiles and clothing, and perhaps in hindsight more importantly, intellectual property within the aegis of the WRT. In addition, the agreement would attempt to rein in the use of governmental subsidies and countervailing measures, the use of certain "technical barriers," tighten antidumping rules and eliminate certain trade-related investment barriers; strengthen measures to open up government procurement to foreign competition; regulate the use of restrictive "safeguard measures;" and increase the transparency of national trade policies. In the context of this study, the Final Act also established procedures to strengthen and clarify the measures by which trade disputes among WTO members would be settled, known as the *"dispute-resolution system.*

The Council for Trade in Goods, established under the WTO. is now responsible for administering the functional areas of GATT. The Council consists of representatives from all WTO member countries (see Bolhofer, 2007). The Council embraces ten committees that address subject areas including:

- Agriculture
- Antidumping Practices
- Customs Valuation
- Import Licensing Procedures
- Information Technology
- Market Access
- Rules of Origin
- Safeguards
- Sanitary and Phytosanitary Measures
- Subsidies and Countervailing Measures
- Technical Barriers to Trade
- Trade-related Investment Measures (TRIMS)
- Working Party on State Trading Enterprises

In comparison to the GATT system, the new WTO dispute resolution procedures, which Reich (2018, p. 1) describes as the "Jewel in the Crown" of the WTO, are more centralized, streamlined, and specific. Interestingly, under the GATT, a decision of a panel had to be adopted by the consensus or agreement of the contracting parties, meaning that the *losing party* could oppose and thus thwart its adoption. In contrast, under the procedures of the WTO, there must be a consensus *against* adoption of the report of the panel (see Guan, 2014; O'Hara, 2021).

5.1. The WTO Dispute Settlement Understanding (DSU)

One of the most crucial functions of the WTO is found in the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (Annex 2 to the WTO Agreement) (Alsharqawi, Alghathian, & Younes, 2020). The DSU states that the dispute settlement system "is a central element in providing security and predictability to the multilateral trading system." The DSU sets forth a "comprehensive statement of dispute settlement rules, building

upon past GATT practices and is responsible for regulating dispute settlements under all covered WTO agreements."

The DSU is administered by the Dispute Settlement Body (DSB), which is the WTO General Council acting in a "specialized role" under a separate chair. As stated on the webpage of the WTO: "The General Council is the WTO's highest-level decision-making body in Geneva, meeting regularly to carry out the functions of the WTO. It has representatives (usually ambassadors or equivalent) from all member governments and has the authority to act on behalf of the ministerial conference which only meets about every two years."

Article 3 sets forth the philosophy of the WTO dispute settlement regime as follows:

> "Firstly, it recognized that the system serves to preserve the rights and obligations of Members and to clarify the existing provisions of the WTO agreement in accordance with the customary rules of interpretation of public international law.
> Secondly, it is agreed that the results of the dispute settlement process cannot add to or diminish the rights and obligations provided in the WTO agreements.
> Thirdly, several provisions highlight that the aim of dispute settlement process is to secure a positive solution to a dispute and that a solution that is acceptable to the parties and consistent with the WTO Agreements is clearly to be preferred.
> Fourthly, although the DSU provides for the eventuality of non-compliance, it is explicitly stated in DSU Article 3.7 that "the first objective of the dispute settlement mechanism is usually to secure the withdrawal of the measures concerned if these are found to be inconsistent with the provisions of any of the covered agreements. Retaliatory action is described as the last resort."

The website of the European Union, which has a collective membership of twenty-seven individual states, and which accounts for 14% of world trade in goods (Eurostat, 2022), adds that dispute resolution:

- Is an objective and effective means of settling disagreements between States or between investors and States on government measures/practice;
- Prevents unilateral actions and the escalation of diplomatic tensions, and contributes overall to peaceful international relations; and
- Clarifies the obligations of States under international law and develops a common understanding through case law.

5.2. DSU Procedures

There are four major phases of dispute settlement:

> First, the parties must attempt to resolve any differences through *consultations* (Klishch & Larionov, 2022);
> Second, if the process of consultations fails, a complaining party may demand that a *panel of independent experts* be established to rule on the dispute (Pauwelyn, 2019);
> Third, and newly established the DSU, is the possibility of an *appeal* by any party to the dispute to the Appellate Body;
> Finally, if the complaining party succeeds, the DSB is charged with "*monitoring the implementation of its recommendations.*" If the recommendations of the Appellate Body are not implemented, there is the possibility of negotiated compensation or the authorization to withdraw any concessions previously granted.

6. Consultations

The requirement of *consultations* stems from the hope that the parties can satisfactorily resolve a matter without having to invoke the more formal dispute settlement mechanisms. The manner in which the consultations are conducted is left to the parties to the dispute. Beyond that, the consultations are to be carried on in "good faith" and are to commence within 30 days of a request. Despite the facts that "the structure of consultations is undefined" and there are no defined rules under which the consultations are to take place, Jackson, Davey, and Sykes (2002)

noted that "a significant number of cases end at the consultation stage (either through settlements or abandonment of a case)." If these consultations fail in their attempt at settlement within 90 days after the request, the complaining party *may* request that a panel be established. In reality, depending on the nature of the dispute, consultations may continue for more than 60 days.

Table 1 at the end of the article is provided to indicate the types of issues found in the requests for consultations during the 2021-2022 period.

7. Panel Process

The rights of a party to a dispute are set out in Article 6.1. As noted, if consultations fail to resolve a dispute within the 60-day period, a complainant may insist of the establishment of a dispute settlement panel. At the meeting following that at which the requests first appear on the DSB's agenda, the DSG is required to establish a panel unless there is a consensus in the DSB not to establish a panel.

The DSB meets as often as is necessary to adhere to the timeframes provided for in the DSU (Article 2.3 of the DSU). In practice, the DSB usually schedules one regular meeting per month. When a Member so requests, the Director-General convenes additional special meetings.

According to the website of the WTO (2022b), the general rule is for the DSB to take decisions by *consensus*. A consensus is defined as being achieved if no WTO Member, present at the meeting when the decision is taken, formally objects to the proposed decision. This means that the chairperson does not actively ask every delegation whether it supports the proposed decision, nor is there a formal vote.

On the contrary, the chairperson merely asks whether the decision can be adopted and if no one voices their opposition, the chairperson will announce that the decision has been taken or adopted. In other words, a delegation wishing to block a decision *is obliged to be present* and when the appropriate time arises, it must "raise its flag" and voice opposition. Any Member that does so is able to prevent the decision.

However, when the DSB establishes a panel, when it adopts a panel recommendation or an Appellate Body report, and when it authorizes retaliation, *the DSB must approve the decision unless there is a consensus against it.* This special decision-making procedure is commonly referred to as *"negative" or "reverse" consensus* (see Loaghaire, 2018).

At the three stages of the dispute settlement process (establishment, adoption, and retaliation), the DSB *must automatically decide to take the action ahead, unless there is a consensus not to do so.* This means that *one sole Member can always prevent this reverse consensus*; that is, one member can avoid the blocking of the decision being taken. To do so, a Member merely needs to insist that the decision be approved.

Because no Member (including the affected or interested parties) is excluded from participation in the decision-making process, the Member requesting the establishment of a panel, the adoption of the report, or the authorization of the suspension of concessions can ensure that its request is approved by merely placing it on the agenda of the DSB. In the case of the adoption of panel and Appellate Body reports, there is at least one party which, having initially prevailed in the dispute, has a strong interest in the adoption of the report(s). In other words, any Member intending to block the decision to adopt the report(s) must persuade *all* other WTO Members (including the adversarial party in the case) to join its opposition or at least to stay passive.

As a result, a negative consensus is largely a theoretical possibility and, to date, *has never occurred*. For this reason, there is a *quasi-automaticity* to these decisions in the DSB. This contrasts sharply with the situation that prevailed under GATT where panels could be established, their reports adopted, and retaliation authorized only on the basis of a *positive consensus*. Unlike GATT, the DSU thus provides no opportunity for blockage by individual Members in decision-making on important matters. Interestingly, the principle of a negative consensus does not appear elsewhere in the WTO decision-making framework other than in the dispute settlement system.

7.1. Establishing the Panel

Once the panel is established, it becomes necessary to select the three individuals who will serve as panelists. The DSU provides for the Secretariat to propose panel members to the parties, who are not to object to their selection "except for compelling reasons." As a matter of practice, however, the parties to the dispute are free to reject proposed panelists. If the parties cannot reach agreement as to the members of the panel within 20 days of its establishment, any party may request the WTO Director-General to appoint the panel on its own authority. In the recent past, the Director-General has appointed members to nearly *one-half* of the panels that were created as a result of actions undertaken by parties to the dispute to reject a proposed panel member.

What are the criteria for membership on a panel? Article 8.1 of the DSU provides for the criteria for serving on a panel. These criteria establish three categories of panelists: current or former government officials, former officials of the Secretariat, and "trade academics" or lawyers who specialize in areas of international trade. Nationals of parties or third parties shall not serve as member of any constituted party to any dispute, absent the agreement of the parties. In the case of a dispute involving a developing country, one party must be from a developing country, if requested. As a practical matter, approximately 80% of individuals selected for the panels are in fact current or former government officials.

As a matter of stated policy, the DSU provides that panelists will serve in their individual capacities, and not as a representative of their government. Members are not permitted to give panel participants any instructions or seek to influence panel members in any way. The rules established by the DSB require that panelists be independent and impartial, shall avoid direct or indirect conflicts of interest and shall respect the confidentiality of the proceedings (World Trade Organization 1996)

7.2. How should a panel proceed?

The DSU [Article 7.1] provides for standard terms of reference which direct a panel to "Examine, in the light of the relevant provisions in [name of the covered agreement or agreements cited by the parties to the dispute], the matter referred to the DSB by [name of party]… and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in that/those agreements." Article 11 provides that a panel shall make an "objective assessment" of the matter before it, including an "objective assessment of the facts of the case and the applicability of and conformity with the relevant WTO agreements."

7.3. What Procedures Will the Panel Follow?

A panel will normally meet with the parties "shortly" after its selection in order to determine procedures and to establish a time schedule (see Horlick & Butterton, 2000). The DSU's standard proposed timetable provides for two meetings between the panel and the parties to the dispute arranged to discuss the substantive issues in the case, usually preceded by written submissions. Interestingly, the DSU permits other members of the WTO to *intervene* as *"*third parties*"* and to present arguments to the panel as well (Covelli, 1999).

In terms of proof, the burden of proving any matter rests upon the party who asserts a particular claim or defense. Once a party meets its obligation to establish a *prima facie* case, the burden then shifts to the other party to rebut what can now be seen as a presumption. Disputes often revolve around disputed facts. In order to establish a factual basis for resolving a dispute, panels will proffer both oral and written questions to the parties. The parties will often produce "experts" in the relevant field (especially in a scientific or technical matter) or will submit affidavit evidence. The panel is charged with determining issues relating to consistency with established WTO rules, the justification for any action taken, whether a measure is "necessary" within the terms of any recognized exception, or whether a measure is based on or is "rationally related" to an assessment of the risk in the case of a measure relating to health that is in dispute.

As noted, under the GATT, decisions of the Council were made by consensus, which meant that any party to a dispute—including the losing party—could prevent the Council from adopting a panel report. If the report was not

adopted by the Council, the report would therefore represent only the views of the individual panel members. This was seen as a major negative of the GATT settlement regime where a losing party was able to prevent the adoption of a panel report.

With the DSU came a fundamental change in the procedures relating to the adoption of a panel report. The possibility of "blockage" was eliminated in Article 16 which provides that a panel report shall be adopted *unless there is an appeal* or what is known as a reverse consensus— a *consensus not to adopt the report.*

8. Appellate Body

The change in the consensus rule was accompanied by the introduction of the right to appeal a panel decision (see Ala'i, 2019). The DSU creates a standing Appellate Body. The website of the WTO notes:

> "The Appellate Body is composed of seven Members who are appointed by the Dispute Settlement Body. Each Member of the Appellate Body is required to be a person of recognized authority, with demonstrated expertise in law, international trade and the subject-matter of the covered agreements generally. They are also required to be unaffiliated with any government and are to be broadly representative of the Membership of the WTO."

The Appellate Body hears appeals of panel reports by three members (termed a *division*), although members of the Appellate Body will often exchange views with the other four members of the Appellate Body. Jackson, Davey, and Sykes (2002) state that "the members of in division that hears a particular appeal are selected by a secret procedure that is based on randomness, unpredictability, and the opportunity for all members to serve without regard to national origin."

The Appellate Body is required to issue its report within 60 days (at most 90 days) from the date of the appeal, and its report is to be adopted *automatically* by the DSB within 30 days, absent consensus once again, as described above, not to do so.

The review of the Appellate Body is limited to issues of law and interpretation of law developed by the panel. The Appellate Body has the power to reverse, modify, or affirm panel decisions; however, the DSU does not include the possibility of remanding a case back to a panel for its re-consideration.

As a general rule, the Appellate Body relies heavily on close "textual interpretation" of WTO provisions, utilizing a standard statutory interpretation which looks to the "ordinary meaning" of the relevant terms so as not to interpret a provision so as to render it devoid of its intended meaning.

9. Implementation and Suspension of Concessions

Article 21.1 of the DSU provides: "Prompt compliance with recommendations or rulings of the DSB is essential in order to ensure the effective resolution of disputes to the benefit of all Members." If the Appellate Body finds that a complaint is justified, the report will typically recommend that the offending member cease in its violation of WTO rules. This is normally accomplished by withdrawing the offending measure. After it adopts the report, the DSB is charged with monitoring whether its recommendations have been implemented. WTO protocols require that a losing party indicate what actions, if any, it plans to take in order to implement the panel's recommendation. Should immediate implementation be impractical, implementation of the recommendation is required "within a reasonable time" (Article 21.3), either by the agreement of the parties or in the absence of an agreement, through arbitration. The period of implementation is not to exceed 15 months; however, the range of 8-10 months is the average time in which the recommendation is implemented.

If a recommendation is not implemented, the prevailing party may seek compensation from the non-compliant party or may rescind or suspend any concessions made to that member (Article 22.1).

Compensation and suspension of concessions, sometimes referred to as "retaliation," are viewed as temporary measures. Valles and McGivern (2000) note that:

The World Trade Organization (WTO) Agreement allows a complaining party to suspend concessions (or "retaliate") when a defending party has failed to comply with the decision of a dispute settlement panel or the Appellate Body. However, the text of the Agreement is ambiguous on two critical points:

(1) who determines whether a defending party has failed to comply; and
(2) when the right to retaliate arises.

There is, however, a clear preference for a withdrawal of any offending practice based on Article XVI.4 which provides: "Each member shall ensure the conformity of its laws, regulations and administrative procedures with its obligations as provided in the annexed agreements."

While Jackson, Davey, and Sykes (2002) reported that despite some variations, cases indicating non-compliance were an exception to an otherwise strong record of compliance.

10. The Current State of Dispute Settlement: Is the United States Responsible for the Breakdown in the WTO? Changing Attitudes Towards Multilateralism and the WTO

The WTO's *World Population Review* (2022) provides a balance of views regarding the WTO. "The WTO is viewed as having pros and cons. Supporters believe the WTO is beneficial to business and the global economy because it lowers barriers to trade and mediates trade disputes between member countries. Skeptics, however, believe that WTO widens the global wealth gap and undermines the principals of organic democracy, which ultimately harms domestic communities and human rights."

Interestingly, the United States has been the subject of more *negative decisions than any other WTO member*, suffering losses in about 90% of WTO claims filed against it. However, at the same time, the U.S. has also won 91% of the complaints it has filed against other countries.

It is no secret that former President Donald Trump was not a supporter of the WTO, stating that the organization too often ruled unfairly against the United States on matters essential to America's national security (see Horton & Hopewell, 2021). Ala'1 (2019, p. 86) commented:

> "President Trump's 2018 Trade Policy Agenda proclaims that '[t]he United States will not allow the WTO—or any other multilateral organization—to prevent us from taking actions that are essential to the economic well-being of the American people.' As part of this agenda, the United States has targeted the Appellate Body of the World Trade Organization (WTO) in particular. The United States claims that the Appellate Body has disregarded the rules as set by WTO Members and has adopted a 'non-text based interpretation' of WTO provisions through an 'activist approach.' The 2018 Trade Agenda concludes, '[t]he United States has grown increasingly concerned with the activist approach of the Appellate Body on procedural issues, interpretative approach, and substantive interpretations.'"

President Trump was especially critical of the WTO's failure to address credible evidence that China regularly used forced and slave labor (see US Department of State, 2021), practices clearly prohibited by WTO guidelines. President Trump's actions included vetoing the appointment of judges to the WTO courts that decide trade disputes (Gantz, 2018), blocking new appellate body members (Galbraith, 2019), and threatening to withdraw the United States from the organization entirely.

Hopewell (2021, p. 1025), however, offers this pointed criticism of the former President's actions:

> "Under President Trump, however, the United States not only abandoned its traditional leadership role in the multilateral trading system but launched an assault on the very system it had created and led. Discarding any commitment to multilateral cooperation or respect for the rule of law, the United States openly embraced the raw use of coercive power in trade: this included arbitrarily imposing tariffs on all of its major trading partners, launching a trade war with China, and threatening to withdraw from trade agreements to strong-arm other states into making concessions to its own

> interests. In short, the world's dominant power began behaving as a rogue state in the multilateral trading system. The American hegemon's blatant violation of the rules and principles of the multilateral trading system, combined with its repeated threats to withdraw from the WTO, plunged the latter—the primary institution intended to ensure stable and orderly trading relations in the global economy—into an existential crisis."

In contrast to the views of the Trump Administration, Swanson (2021) reports that President Biden has indicated a more cooperative stance toward the WTO. It should be noted that the Biden administration has indicated that the WTO is in need of significant reform, particularly starting with more streamlined dispute-settling processes and action upon a number of issues including China's trade practices and how best to distribute vaccines—which are protected intellectual property—during a global pandemic (Swanson 2021).

But are the views really that divergent?

The selection of a Director General or the appointment of Appellate judges may be seen as a proxy for a shifting view of the United States and many of its major allies that the WTO is failing to meet the promise of its founding in 1995.

According to Corporal (2018), writing for the Center for Strategic Studies, the WTO's dispute settlement function is at "risk of collapse." As was noted, for roughly two years, the United States has continued to block the appointment of any new judges to the WTO's Appellate Body due to complaints over alleged "judicial activism" within the Appellate Body and concerns raised by the United States relating to infringements on U.S. sovereignty. Efforts undertaken to initiate reforms in the dispute settlement system in response to U.S. demands which might result in breaking the impasse have thus far proven unsuccessful. In fact, the terms of two of the three remaining Appellate Body members have expired and the Appellate Body has lacked a quorum necessary to hear appeals, "grinding the dispute settlement system to a halt and throwing into doubt the WTO's role in enforcing multilateral trade rules."

The selection of the Director General as a result of the unexpected resignation of Roberto Azevedo before his term was set to expire prompted a serious reappraisal of U.S. participation in the WTO. With the election of Donald Trump's in 2016, the WTO had to contend with an administration that was overtly skeptical of the ability of the WTO to meet its core obligation to reduce trade barriers and to assure transparency and full compliance with WTO rules. This skepticism played out with the U.S. refusing to appoint judges to the organization's top dispute settlement panel, the Appellate Body, leaving it in a state of virtual paralysis.

However, the actions of former President Trump, described by some as "return to protectionism," are in line with policies espoused by prior U.S. administrations. In fact, the Obama administration began the practice of blocking Appellate Body candidates in 2011 when it refused to allow the reappointment of the U.S. nominee, Jennifer Hillman, on the grounds that "she had not upheld U.S. protectionist measures being challenged in WTO dispute settlement" (Charnovitz, 2016). In 2016, President Obama also prevented the reappointment of a Korean judge, Seung Wha Chang, arguing that he was "acting outside his mandate" by substituting his own judgment for that of the text and the clear intentions of the parties in siding with China in its successful challenge against countervailing duties imposed by the Obama Administration (Charnovitz, 2016).

The United States has argued that the WTO system itself is the real problem because it contains no standards or enforcement provisions relating to labor or the environment and has become the major "*catalyst for offshoring"* or moving jobs to places with lower labor and regulatory costs.

Critically, the U.S. believes the WTO has paid little attention to issues relating to *fair competition*, allowing China, in particular, to reap immense benefits from participation in a globalized trading system after its accession to the WTO in 2001 while maintaining anticompetitive practices such as the "golden share" (see Antonaki, 2022), the outright theft of U.S. intellectual property, allegedly engaging in currency manipulation (Gueorguiev, McDowell, & Steinberg, 2020), and other predatory practices including dumping and unfair subsidization to the detriment of U.S. interests while millions of working- and middle-class families throughout the industrial world have

experienced severe economic dislocation "as the result of a global economic system that has consistently prioritized the free flow of goods and capital over other considerations" (Sutton & Green, 2020).

Sutton and Green (2020) have set forth an activist agenda for reforms of the current WTO system. They include undertaking actions providing for the well-being of workers; dealing with the "existential threat" of climate change; undertaking measures regulating excessive concentration of economic power, especially evidenced by China's system of "state capitalism" (Petry, 2021) and the emergence of global economic *super-corporations*; and the extreme fragility of global supply chains, exacerbated by the lingering effects of the world-wide Covid pandemic especially in pharmaceutical production, food, electronics, and the automotive industry (see Xu, Elomri, Kerbache, & Elomri, 2020).

11. Conclusions and Observations

What are the parameters of potential WTO reforms?

It might surprise observers that two-thirds of the WTO's 164 member states continue to claim "developing country" status, allowing them to take advantage of benefits and exemptions to WTO obligations not granted to advanced or developed economies (Weinhardt, 2020). Notes Gonzalez and Jung (2020), "To defend their commercial interests and resolve inevitable trade conflicts, [these countries] have actively and successfully used the WTO's dispute settlement system." A realistic system of economic classifications must be created to assure that countries who are able to fully comply with WTO rules should do so as fully as possible (see Gonzalez & Jung, 2020).

In addition, there needs to be a real "soul searching" reappraisal of the core premise that member states will engage in serious negotiations over trade matters. Corporal (2018), writing for the Center for Strategic and International Studies (CSIC), notes that "The failure of many countries, including major economies like China, to comply with notification and transparency obligations has made negotiating new rules and agreements even more difficult" (see also Ungphakorn, 2022). Ironically, certain members, most notably China, have taken advantage of the uncertainty at the WTO and continue to maintain blatantly discriminatory barriers targeting imports, to intervene in markets to support state-owned enterprises, and to fail to report state subsidies to the WTO accurately.

Some countries, most notably the United States, have continued to raise concerns with the WTO dispute settlement system— specifically the Appellate Body— where the United States maintains that decisions have been made beyond its original mandate, diminishing "the rights of WTO members by reinterpreting WTO agreements, despite WTO members having never agreed to those interpretations."

The European Union (EU) has been especially active in suggesting reforms in the WTO system. The EU has put forth specific suggestions worth noting for reform including "leveling the playing field between member states by creating stronger rules and definitions governing state-owned enterprises and 'market-distorting subsidies.'" The EU has also suggested "improving transparency and subsidy notifications from member states, removing investment barriers in service industries, and adopting specific rules to discourage forced technology transfers." Notes the firm of Septoe & Johnson (2021): "Not only is trade vital for our economy; promoting rules-based international cooperation is the very essence of the European project. The EU must therefore play a leading role in creating momentum for meaningful WTO reform."

Specifically, the firm of Septoe & Johnson (2021) states: that the Commission proposes that Members:

- continue negotiating new rules on digital trade, services and investment. These are deemed essential to adapt the rules to the digital transformation, and reflect the growing importance of services;
- create stricter rules on industrial subsidies as an essential step to countering competition distortions. An important objective in this regard is to significantly increase transparency and identify additional categories of prohibited subsidies, including those presumed to be injurious, and those supporting legitimate public goals while having minimal distortive impact on trade;

- create rules to regulate state-owned enterprises;
- further reflect on the potential role of new WTO rules to ensure the principle of competitive neutrality and promote a level playing field (for instance, addressing forced technology transfers to a government or competitor);
- update market access commitments and address imbalances between members' access; and
- unblock agricultural negotiations…."

The United States, the European Union, and Japan have begun *trilateral negotiations* relating to non-market practices, updating rules governing self-classification of developing country status, addressing concerns relating to "coercive technology transfers," industrial subsidies and state-owned enterprises, and other "non-market-oriented policies and practices of third countries."

One thing seems certain: Without serious reforms, one or more major economies could leave the WTO, leading to a proliferation of bilateral and regional trade agreements that may temporarily address member states' complaints, but only on a case-by-case basis. Corporal (2018) opines: "Those developments could extract a high cost on the global economy and severely diminish global growth and economic stability for years, if not decades." Perhaps more importantly, the demise of the WTO system could signal the reintroduction of a new round of trade barriers, a "loss of predictability and uncertainty for multinational companies and governments alike, and the absence of a credible venue to mediate trade disputes…."

A direct crisis was averted when Ngozi Okonjo-Iweala assumed the position of Director General. However, as Linscott (2021) noted: "A solution could involve a truly multilateral effort, with all … members—including the United States and China—coming together to revitalize the institutional foundations of the organization and resume the Appellate Body's effective system of resolving disputes and enforcing the results." But any "solution" must not solely be focused on administrative matters but must involve the real reforms suggested by Sutton and Green (2020) and the firm of Septoe & Johnson (2021) or the process will return the WTO to chaos, uncertainty, and perhaps the inevitable but regrettable withdrawal of the United States.

Table 1: Requests for Consultations

DS615 United States — Measures on Certain Semiconductor and other Products, and Related Services and Technologies
COMPLAINANT: CHINA
CONSULTATIONS REQUESTED: 12 DECEMBER 2022 CURRENT STATUS: IN CONSULTATIONS

DS614 Peru — Antidumping and countervailing measures on biodiesel from Argentina
SHORT TITLE: PERU — BIODIESEL (ARGENTINA)
COMPLAINANT: ARGENTINA
CONSULTATIONS REQUESTED: 2 SEPTEMBER 2022 CURRENT STATUS: IN CONSULTATIONS

DS613 European Union — Measures concerning the importation of citrus fruit from South Africa
SHORT TITLE: EU — CITRUS FRUIT (SOUTH AFRICA)
COMPLAINANT: SOUTH AFRICA
CONSULTATIONS REQUESTED: 27 JULY 2022 CURRENT STATUS: IN CONSULTATIONS

DS612 United Kingdom — Measures Relating to the Allocation of Contracts for Difference in Low Carbon Energy Generation
SHORT TITLE: UK — CFD (EU)
COMPLAINANT: EUROPEAN UNION
CONSULTATIONS REQUESTED: 28 MARCH 2022 CURRENT STATUS: IN CONSULTATIONS

DS611 China — Enforcement of Intellectual Property Rights
SHORT TITLE: CHINA — IPRS ENFORCEMENT (EU)
COMPLAINANT: EUROPEAN UNION
CONSULTATIONS REQUESTED: 18 FEBRUARY 2022 CURRENT STATUS: IN CONSULTATIONS

DS610 China — Measures Concerning Trade in Goods and Services
SHORT TITLE: CHINA — GOODS AND SERVICES (EU)
COMPLAINANT: EUROPEAN UNION
CONSULTATIONS REQUESTED: 27 JANUARY 2022 CURRENT STATUS: IN CONSULTATIONS

DS609 Egypt — Registration requirements relating to the importation of certain products
SHORT TITLE: EGYPT — IMPORT REGISTRATION REQUIREMENTS (EU)
COMPLAINANT: EUROPEAN UNION
CONSULTATIONS REQUESTED: 26 JANUARY 2022 CURRENT STATUS: IN CONSULTATIONS

DS608 Russian Federation — Measures Concerning the Exportation of Wood Products
SHORT TITLE: RUSSIA — WOOD (EU)
COMPLAINANT: EUROPEAN UNION
CONSULTATIONS REQUESTED: 20 JANUARY 2022 CURRENT STATUS: IN CONSULTATIONS

DS607 European Union — Measures Concerning the Importation of Certain Poultry Meat Preparations from Brazil
SHORT TITLE: EU — POULTRY MEAT PREPARATIONS (BRAZIL)
COMPLAINANT: BRAZIL
CONSULTATIONS REQUESTED: 8 NOVEMBER 2021 CURRENT STATUS: IN CONSULTATIONS

DS606 European Union — Provisional Anti-Dumping Duty on Mono-Ethylene Glycol from Saudi Arabia
SHORT TITLE: EU — PROVISIONAL AD DUTY ON MEG (SAUDI ARABIA)
COMPLAINANT: SAUDI ARABIA, KINGDOM OF
CONSULTATIONS REQUESTED: 17 AUGUST 2021 CURRENT STATUS: IN CONSULTATIONS

DS605 Dominican Republic — Anti-dumping measures on corrugated steel bars
SHORT TITLE: DOMINICAN REPUBLIC — AD ON STEEL BARS (COSTA RICA)
COMPLAINANT: COSTA RICA
CONSULTATIONS REQUESTED: 23 JULY 2021 CURRENT STATUS: PANEL COMPOSED

DS604 Russian Federation — Certain Measures Concerning Domestic and Foreign Products and Services
SHORT TITLE: RUSSIA — DOMESTIC AND FOREIGN PRODUCTS AND SERVICES
COMPLAINANT: EUROPEAN UNION
CONSULTATIONS REQUESTED: 22 JULY 2021 CURRENT STATUS: PANEL COMPOSED

DS603 Australia — Anti-Dumping and Countervailing Duty Measures on Certain Products from China
SHORT TITLE: AUSTRALIA — AD/CVD ON CERTAIN PRODUCTS (CHINA)
COMPLAINANT: CHINA
CONSULTATIONS REQUESTED: 24 JUNE 2021 CURRENT STATUS: PANEL COMPOSED

DS602 China — Anti-Dumping and Countervailing Duty Measures on Wine from Australia
SHORT TITLE: CHINA — AD/CVD ON WINE (AUSTRALIA)
COMPLAINANT: AUSTRALIA
CONSULTATIONS REQUESTED: 22 JUNE 2021 CURRENT STATUS: PANEL COMPOSED

DS601 China — Anti-Dumping measures on stainless steel products from Japan
SHORT TITLE: CHINA — AD ON STAINLESS STEEL (JAPAN)
COMPLAINANT: JAPAN
CONSULTATIONS REQUESTED: 11 JUNE 2021 CURRENT STATUS: PANEL COMPOSED

DS600 European Union and Certain Member States — Certain measures concerning palm oil and oil palm crop-based biofuels
SHORT TITLE: EU AND CERTAIN MEMBER STATES — PALM OIL (MALAYSIA)
COMPLAINANT: MALAYSIA
CONSULTATIONS REQUESTED: 15 JANUARY 2021 CURRENT STATUS: PANEL COMPOSED

DS599 Panama — Measures concerning the importation of certain products from Costa Rica
SHORT TITLE: PANAMA — IMPORT MEASURES (COSTA RICA)
COMPLAINANT: COSTA RICA
CONSULTATIONS REQUESTED: 11 JANUARY 2021 CURRENT STATUS: PANEL COMPOSED

TABLE OF ABBREVIATIONS	
DSB:	Dispute Settlement Body
DSU:	Dispute Settlement Understanding
ECOSOC:	Economic and Social Council
EU:	European Union
GATT:	General Agreement on Tariffs and Trade
IMF:	International Monetary Fund
ITO:	International Trade Organization
LIEO:	Liberal International Economic Order
MFA:	Multifibre Arrangement
MFN:	Most Favored Nation (GATT)
NTB:	Non-Tariff Barrier
NTR:	Normal Trade Relations (WTO)
TBT:	Technical Barrier to Trade
USTR:	United States Trade Representative
WB:	World Bank
WTO:	World Trade Organization

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